

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Commonwealth Edison Company)	
Application of Commonwealth Edison)	
Company, for a Certificate of Public)	
Convenience and Necessity, pursuant to)	Docket No. 07-0310
Section 8-406 of the Illinois Public Utilities)	
Act, to construct, operate and maintain a new)	
138,000-volt electric transmission line in Kane)	
and McHenry counties, Illinois.)	

**RESPONSE OF KREUTZER ROAD PARTIES TO VILLAGE OF
HUNTLEY’S PETITION FOR INTERLOCUTORY REVIEW**

Frances Kreutzer, Marie Caranci, and William and Linda Byrne, (the “Kreutzer Road Parties”), by their attorney, pursuant to Section 200.520 of the Rules of Practice of the Illinois Commerce Commission (“Commission”), 83 Ill. Admin. Code 200.520, hereby respond to the Village Of Huntley’s (“Huntley”) Petition for Interlocutory Review (“Huntley Petition”), which was filed on February 19, 2008. The Kreutzer Road Parties agree with the Huntley Petition and request that the Commission grant the prayer for relief in the Huntley Petition. In support of its response, the Kreutzer Road Parties state as follows.

1. In this proceeding, Huntley has offered and advocated as an alternative to Commonwealth Edison’s (“ComEd”) proposed transmission project route the so-called Modified Freeman-Galligan route. Huntley described the Modified Freeman-Galligan route in the direct testimonies of its witnesses Carl Tomaso, Huntley Ex. 2.0, and Dr. Paul Mixon, Huntley Ex. 1.0. Huntley’s direct testimony advocating the Modified Freeman-Galligan route was filed on November 2, 2007. The Modified Freeman-Galligan route would cross through land that was part of a development known as The Conservancy and planned by the now-bankrupt Neumann

Homes. The Kreutzer Road Parties have stated their support for the Modified Freeman-Galligan route.

2. At the January 30, 2008, hearing in this matter, which was the last day of hearings, counsel for Huntley attempted to introduce into the record certain exhibits which counsel represented contained alternative routing options prepared by Gary Weber and Associates, landscape architects and development planners (the “Conservancy Exhibits”). The stated purpose of the attempted introduction of the exhibits was to counter rebuttal testimony by other parties that the Modified Freeman-Galligan route proposed by Huntley (and supported by the Kreutzer Road Parties) would significantly devalue The Conservancy development.

3. As stated above, The Conservancy is a development of Neumann Homes, a party to this proceeding which entered bankruptcy proceedings prior to the hearings held in this matter, and which did not file any testimony and did not participate in the hearings. The Conservancy is located within the planning area of the Village of Gilberts. At the time of the hearings, The Conservancy had two model homes and two additional foundations constructed (Tr. 460), all located well away from the transmission line as it would be located along the Modified Freeman-Galligan route.

4. Mr. Raymond B. Keller, Village Administrator for the Village of Gilberts, testified that the routing of the transmission line as proposed by Huntley “would inordinately disrupt the subdivision,” and “would jeopardize an estimated \$8.3 million investment to extend infrastructure to and through the subdivision.” Village of Gilberts Ex. 2.0, lines 32-37.

5. Mr. Brian Walsh, a Regional Manager for IndyMac Bank (“IndyMac”), submitted 38 lines (not pages) of prepared rebuttal testimony. In his prepared testimony, Mr. Walsh mentioned IndyMac’s interest as a first mortgage lender to Neumann Homes, which loan was secured in

part by The Conservancy, the amount that Neumann Homes is alleged to have spent on The Conservancy prior to its bankruptcy, the general nature of work performed, that IndyMac plans to sell The Conservancy to a real estate development company, and that the modified Freeman-Galligan route will “significantly reduce the value of IndyMac Bank’s collateral and force a prospective purchaser to spend millions of dollars to modify already existing development and infrastructure work.” IndyMac Ex. 1.0, p. 2, lines 9-11.

6. Over objection, Mr. Walsh was permitted to provide substantial additional live testimony at the January 30 hearing, which additional live testimony spanned 17 pages of the transcript, Tr. 432-449. Included in such additional live testimony was further testimony about specific alleged adverse impacts on the value of The Conservancy stemming from the modified Freeman-Galligan route. Tr. 447-449. Mr. Walsh testified, again for the first time in his live hearing testimony, that an appraiser told him that lots adjacent to the power line would suffer an estimated 25 percent decrease in value. Tr. 447, lines 19-22; Tr. 463, lines 12-16. He further testified that “we might lose lots outright. We might have lots that are in the plan that wouldn’t be able to be developed. So those would be a total loss.” Tr. 448, lines 1-5. On cross-examination, Mr. Walsh stated the total number of lots that would be lost outright was 40-50. Tr. 463, lines 17-22, and 464, lines 1-4.

7. Mr. Walsh further testified on cross-examination that a replacement developer may need to reconfigure streets and lots. Tr. 465, lines 10-15. He admitted, however, that if the transmission line were moved “ever so slightly north and if the right of way did not include those (lost) properties, those wouldn’t be lost.” Tr. 468, lines 12-17. It was at this point in the cross-examination that counsel for Huntley, logically following up on his line of questioning on cross, attempted to show Mr. Walsh the Conservancy Exhibits as representing a possible alignment of

the Modified Freeman-Galligan route. While counsel for ComEd voiced no objection, counsel for the Village of Gilberts objected based on a lack of foundation. The Administrative Law Judge (“ALJ”), noting that, “This is the same document that I rejected earlier,” Tr. 475, lines 4-5, refused to allow the Conservancy Exhibits to be used for cross-examination. Following counsel for Huntley’s offer of proof, the ALJ made the Conservancy Exhibits (subsequently marked as Huntley Cross Exhibits 10, 11 and 12) part of the record, but as rejected exhibits. Tr. 488, lines 7-9.

8. During his cross-examination of Mr. Keller for the Village of Gilberts, counsel for Huntley attempted to show the witness the Conservancy Exhibits and to ask him to compare them to the witness’ own exhibits depicting The Conservancy. Counsel for the Village of Gilberts objected and, following arguments by counsel for the respective parties (see Tr. 530-535), the ALJ ruled, “I am going to stand by my original ruling that rejected that exhibit.” Tr. 536, lines 3-4.

9. Counsel for Huntley aptly described the reasons and need for introducing the Conservancy Exhibits during the cross-examination of Mr. Walsh for IndyMac and Mr. Keller for the Village of Gilberts. Mr. Walsh was generously and unfairly permitted, over objection, to provide the great majority of his testimony live at the hearing, rather than being required to prepare and file it in advance, unlike witnesses for the other parties.

10. The Village of Gilberts failed to respond to Huntley’s data request which asked for the identity of all infrastructure within The Conservancy until the day before prepared rebuttal testimony was due. The out-of-time response by the Village of Gilberts violated Section 200.410 of the Commission’s Rules of Practice. 83 Ill. Admin. Code 200.410. Based on their own

separate interest, the Kreutzer Road Parties were independently entitled to a timely response to Huntley's data request.

11. Both the extensive live testimony that Mr. Walsh was allowed to present and the failure of the Village of Gilberts to provide its data request response within the time limits previously set deprived the parties of important and relevant information on a timely basis and were, therefore, highly prejudicial to Huntley and the other parties. ComEd's depiction of The Conservancy and the Modified Freeman-Galligan route in ComEd Ex. 8.2 was too crude and lacking in detail to adequately disclose or inform any party as to the impact of the route on particular lots or other elements of the planned development.

12. The ALJ abused his discretion and deprived Huntley and other parties of due process in not allowing counsel for Huntley to utilize the Conservancy Exhibits for the limited, specific purpose of cross-examining the witnesses for IndyMac and the Village of Gilberts, in order to rebut the allegations by those witnesses of great harm from the location of the Modified Freeman-Galligan route in relation to elements of The Conservancy development, especially in light of the prejudicial abuse of process inflicted by those two parties. The proper ruling would have been to allow counsel for Huntley to utilize the Conservancy Exhibits for cross-examining Mr. Walsh and Mr. Keller to test their virtually unsupported, sensationalized allegations of the extent of the harm in the value of The Conservancy, whose development had been terminated after the construction of limited infrastructure and just two homes and two foundations by its bankrupt developer. The allegations of extreme decline in value these two parties (IndyMac and Village of Gilberts) provided did not come to light until after Huntley and other parties filed their rebuttal testimony. In light of the 11th hour disclosure of said allegations of impact on value, the ALJ should have permitted counsel for Huntley to introduce contrary evidence to the limited

extent needed to counter the unfair prejudice that resulted from the discovery delays and hearing tactics described above. *See* M. Graham, Handbook of Illinois Evidence Sec. 103.4, p. 18 (7th ed. 1999); *See Wine v. Bauerfreund*, 155 Ill. App. 3rd 19, 107 Ill. Dec. 491, 507 N.E.2nd 155 (1987). By denying Huntley the opportunity to test the adverse witnesses' allegations regarding the negative impact on value of the Modified Freeman-Galligan route, the ALJ, in contravention of the Commission's Rules of Practice, is depriving the parties and the Commission of a "complete and factual record to serve as a basis for a correct and legally sustainable decision," and depriving Huntley of a reasonable opportunity to "negate any disadvantage or prejudice" that Huntley experienced. 83 Ill. Admin. Code 200.25.

WHEREFORE, for the foregoing reasons, the Kreutzer Road Parties join with Huntley and respectfully request that the Commission re-open the record and allow Huntley to conduct the additional, limited witness examination described in Huntley's prayer for relief, and to direct the ALJ to adjust the remaining schedule accordingly.

Dated: February 26, 2008

Respectfully submitted,

The Kreutzer Road Parties

By:

A handwritten signature in dark ink, appearing to read 'W. M. Shay', written in a cursive style.

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